The Complex Intersection of Human Rights, Benefit Plans and Medical Marijuana

The decision of *Skinner v. Board of Trustees of the Canadian Elevator Industry Welfare Trust Fund* reminds employers and administrators of health and welfare plans that, under the right circumstances, reasonable accommodations for benefits requests can include medical marijuana. This is in line with recent jurisprudence on how to handle issues relating to medicinal marijuana in the workplace. This case is set in a specific legal and contractual context but helpfully lays out a clear analytic framework for the different limitations on administrators when presented with a request for medical marijuana to be covered under a health and welfare plan.

**Background Facts**

Briefly, the complainant Mr. Skinner was involved in a motor vehicle accident while working at ThyssenKrupp Elevator Canada in August 2010. Afterward, he developed chronic pain, anxiety and depression disorders and was unable to work. He has been on long-term disability and income replacement benefits since the accident.

For two years he was able to manage his medical conditions by way of more conventional drugs but, in the summer of 2012, he was prescribed medical marijuana. The drug was initially covered by his motor vehicle insurance. When that coverage was depleted, he approached the board of trustees for the Canadian Elevator Industry Welfare Trust Fund, since they were responsible for the management of his health benefits through the Canadian Elevator Industry Welfare Trust Plan.

Mr. Skinner contacted the administrator of the welfare plan after his initial application for coverage was denied by the Workers’ Compensation Board. The trustees considered Mr. Skinner’s request twice and denied it both times based on the fact that (1) medical marijuana was not an approved drug under the welfare plan terms because it did not have a drug identification number (DIN) and (2) that his medical expenses should be covered by a provincial medicare plan rather than by the welfare fund.

Mr. Skinner then appealed under the Nova Scotia Human Rights Act to the Human Rights Commission, which referred the complaint to a board of inquiry.

**Specific Context Considerations for Dealing With Medical Marijuana**

The board first looked at whether medical marijuana could be deemed an eligible medical expense, though it admitted it did not have the jurisdiction to conclude that the trustees misinterpreted the welfare plan. The board relied on two recent labour arbitration cases, one in which the benefits plan explicitly required a DIN for covered prescriptions and one in which, because the benefits plan allowed coverage for drugs and medication, the prescription was deemed to be eligible medication. The board also concluded that the welfare plan lacked exclusionary definitions for key terms. A close analysis of the welfare plan text led to the conclusion that medical marijuana was a drug or medicine under the plan and that the trustees were only limited by economic sustainability considerations in their authority to grant coverage.

The decision also recognized the current complexity of the legality of marijuana in Canada, citing numerous cases and legislation and acknowledging that none were directly applicable to the human rights arena. Previous cases, requests and decisions had all been dealt with by an interpretation of the particular statutory or contractual provisions at issue. This case, on the other hand, dealt solely with the reasonableness of the complainant’s request for coverage, and prior cases on medical marijuana were of limited guidance.

In this context, the board took the time to analyse the importance of marijuana to the complainant. Both the complainant and respondent agreed...
it had significantly improved his functioning and reduced the other medications he had been taking beforehand. In the interpretation of the board, all but one of the many medical and expert opinions presented to the board supported Mr. Skinner’s use of medical marijuana and agreed that it improved his functionality. The board of inquiry ultimately concluded that medical marijuana was medically necessary for the complainant.

Analysis of Discrimination on the Basis of Physical or Mental Disability

The complainant in human rights cases must first establish that there is a prima facie case of discrimination, which in Nova Scotia requires a distinction based on a statutorily listed characteristic that imposed a burden, obligation or disadvantage to the complainant compared with other individuals. This analysis is slightly complicated by the fact that Nova Scotia does not exclude bona fide benefit plans from the requirements of the Human Rights Act, other than for age-based distinctions. The board analysis of the exclusions in the act led them to conclude that the act could apply very differently to a public benefits plan, where the discrimination could be deemed to be prescribed by law and therefore exempt from scrutiny by the Human Rights Commission.

The board found no direct discrimination in the welfare plan but concluded that, because the Human Rights Act prohibited adverse distinctions based on an enumerated ground that resulted in an unequal disadvantage, a prima facie case could be made on the effects that the denial of the provision of marijuana had on the claimant.

The procedure for a broad and purposive analysis was based on the evaluation delineated by the Supreme Court of Canada in *Battlefords and District Co-operative Ltd. v. Gibbs*, 1996 CanLII 187 (SCC). The purpose of the welfare plan was determined to be to economically, efficiently and sustainably maximize the pension and welfare benefits available to the beneficiaries of the plan. Relying on this purpose, the substantive treatment of beneficiaries was scrutinized, not on the basis of whether other beneficiaries had received coverage for medical marijuana but rather on the basis of whether other beneficiaries had received coverage of specially requested, medically necessary prescription drugs. The denial of coverage was a disadvantage that, coupled with the fact that the trustees had considered the complainant’s disability, was sufficient to amount to a prima facie finding of discrimination.

The respondents had little evidence to refute the unreasonableness of their decision once the board had found that the initial decision was discriminatory. The trustees led no evidence to establish that coverage of medical marijuana, on a case-by-case basis or as an amendment to the welfare plan, would result in undue hardship. The trustees were deemed to have failed in their duty to accommodate the complainant’s request for coverage of his medical marijuana prescription. The matter of remedy was left to be settled between the parties, with the option of returning to the board of inquiry if an agreement could not be reached.

Conclusion

This thorough decision is a useful road map for dealing with the complex intersection of human rights complaints, private benefit plan analysis and the status of medical marijuana coverage. The board was careful to clarify that this decision did not imply that other benefit plans must cover medical marijuana or other prescriptions, and it also reiterated that this decision was based on the specific lack of statutory or other limitations. Nevertheless, this case adds to the growing list of court and arbitrator decisions finding for an employee claiming a right to medical marijuana usage. Administrators of health and welfare plans would be well-served by abiding by the recommendations of the recently released report from the federal task force on cannabis legalization and regulation and updating their policies and best practices to take into account the particular complexities of medical marijuana.